IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1470

MORRIS KING UDALL and NANCY SALMON, individually and on behalf of all other qualified voters similarly situated,

Appellants,

vs.

OTIS BOWEN, individually and as Governor of the State of Indiana, WILLIAM LLOYD, individually and as Representative of the Governor of Indiana; LARRY CONRAD, individually, and as Secretary of State of Indiana; JAMES T. NEAL and THURMAN M. DE MOSS, individually and as members of the Indiana State Election Board,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JURISDICTIONAL STATEMENT

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JURISDICTIONAL STATEMENT

Appellants appeal from the Judgment of the United States District Court for the Southern District declaring that the provision in IC 1971, 3-1-9-19 conditioning candidacy in a presidential primary election upon submitting

a petition to the Secretary of State of Indiana containing at least 500 signatures of registered voters from each of the eleven congressional districts within the state of Indiana. Appellants submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal, that a substantial federal question is presented and that irreparable harm will befall appellants if injunctive relief is denied after May 1, 1976.

ORDERS AND OPINIONS

The memorandum and orders of the District Court of the Southern District of Indiana are unreported. They are set forth in the record of the District Court accompanying this application.

JURISDICTION

This suit was brought pursuant to 42 U.S.C. § 1983 and U.S. Const. Amendment I and Amendment XIV. Jurisdiction was based upon the above provisions and on 28 U.S.C. §§ 1331, 1343, 2201, 2202, 2281 and 2284. The three-judge district court was asked to declare invalid and enjoin enforcement of a provision of IC 1971, 3-1-9-19. The Memorandum and Order of the three-judge district court was entered on April 1, 1976; Appellant's Petition for injunctive relief, pending appeal, was denied on April 5, 1976; and Appellants' Notice of Appeal was filed in the district court on April 5, 1976. The jurisdiction of the Supreme Court to review the decision by direct appeal is conferred by 28 U.S.C. § 1253. Cases supporting jurisdiction include *Socialist Labor Party v. Gilligan*, 406 U.S. 583 (1972) and *Communist Party v. Whitcomb*, 414 U.S. 441 (1974).

QUESTION PRESENTED

Whether appellants' rights under the First and Fourteenth Amendments of the Constitution are violated by the Indiana law conditioning access of appellant candidate to the Indiana Primary Ballot upon submission to the Indiana Secretary of State of a petition signed by at least a minimum of five hundred signatures of registered voters from each of the 11 congressional districts within Indiana.

STATUTE INVOLVED

The statute in controversy in this Case is IC 1971, 3-1-9-19, as amended by Senate Bill 23 of the 1976 Indiana General Assembly which reads as follows:

> 3-1-9-19 [29-3619]. Nomination of presidential candidates—Certification—Duties of delegates to national conventions.—For the purpose of enabling every voter to express his choice for the nomination of a candidate for president of the United States, any candidate for such office either personally or through his representative shall, at least fifty [50] days and not more than seventy-five [75] days before the primary election held in the year in which a president of the United States is to be elected, file a written request with the secretary of state requesting that his name shall be placed upon the primary ballot or voting machine under the party label of the party whose nomination the candidate is seeking. Such request shall be accompanied by a petition, and counterparts thereof, signed by at least five thousand five hundred [5,500] registered voters of the state of Indiana, and each congressional district shall be represented thereon with a minimum of five hundred [500] registered voters thereon from that district, requesting that such name shall be placed on the primary ballot or voting machine at the primary election. In order for such petitions to be considered valid by the secretary of state the signatories of every such petition shall be

certified to be registered voters by each county clerk or board of voters registration whose respective counties have petitioners registered therein, and said certification shall accompany and be filed with said petition. At least thirty-seven [37] days before such primary is to be held, the secretary of state shall transmit to the clerk of the circuit court of each county a certified list containing the names of each person qualified as a candidate for nomination for the office of president of the United States and the name of a party whose nomination said candidate is seeking. The clerk of the circuit court of each county shall cause the names of such candidate or candidates so certified by the secretary of state to be placed on the primary ballot or voting machine in a manner as now provided by law. The clerk of the circuit court of each county shall, not later than the Tuesday succeeding the day upon which the primary is held, send to the secretary of state, by registered mail, one [1] complete copy of all returns as to such candidate or candidates. The secretary of state shall certify to the chairman of each political party the result of the presidential vote of the candidates of such party which result shall be reported by the chairman to the state convention held by such party. It shall be the duty of any delegate or alternate delegate selected from any congressional district of the state, to the national convention held by such party, to support on the first ballot at the national convention the candidate for president who received the highest number of votes at the primary election in such congressional district providing such person is in fact a candidate at such convention. It shall be the duty of any delegate-at-large or alternate delegate-at-large, to the national convention held by such party, to support the candidate for president who received the highest number of votes in the entire state at the primary election on the first ballot at the national convention provided that such person is in fact a candidate at such convention. [Acts 1945, ch. 208, § 100a, as added by Acts 1953, ch. 193, § 1, p. 720; 1965, ch. 12, § 1, p. 16.]

STATEMENT OF THE CASE

The facts of the case, as shown by the pleadings and affidavits, are clear and undisputed. IC 1971, 3-1-9-19, as last amended by Ind. Acts 1976, P.L. 1 (Senate Enrolled Act No. 23), requires a candidate who wishes his name placed on the Indiana presidential preferential primary ballot to submit to the Indiana Secretary of State, by at least fifty (50) days before the date of the primary election, a petition, and counterparts thereof, bearing the signatures of at least five thousand five hundred (5,500) registered Indiana voters. The statute also requires a minimum of five hundred (500) signatures of registered voters from each of Indiana's eleven congressional districts. IC 1971, 3-1-1-2.5 provides that where an election statute requires a filing to be made by a certain day but does not specify a final hour, the final hour shall be twelve o'clock noon, prevailing time. Applied to this year's filing, these statutes required candidate Udall to file with the Indiana Secretary of State his petition bearing the requisite number of signatures by twelve o'clock noon, March 15, 1976.

Candidate Udall, while he filed a petition bearing the names of over 5,500 registered voters as required by law and by the required deadline, the petition did not include the names of the required number of registered voters within the Sixth Congressional District of Indiana. His petition was thirty-five signatures short from the district; i.e., he submitted 465 signatures from the sixth Congressional District.

Consequently, appellee-defendant Conrad, the Secretary of State, did not certify Udall's name to Indiana circuit court clerks for placing on the primary ballot. Udall and Nancy Salmon, an Indiana voter purporting to sue on her own behalf and on behalf of all other similarly situated voters, brought suit in the District Court to obtain a judg-

ment declaring unconstitutional and enjoining the enforcement of the 500 voter per district provision of Ind. Code § 3-1-9-19.

Subsequently, the district court (The Honorable Cale J. Holder) decided that plaintiffs' claim of unconstitutionality was insubstantial and dismissed the case without convening a three-judge court. Judgment dismissing the action was entered March 23, 1976. On March 29, 1976, the United States Court of Appeals for the Seventh Circuit, finding that a substantial federal question had been raised in petitioners' complaint as to whether the state may limit access to the ballot by requiring a minimum showing of support for a Candidate on a state-wide basis in all eleven congressional districts of the state, vacated the order of the single judge and remanded the case for determination by a three-judge court convened pursuant to 28 U.S.C. § 2284.

The case upon being remanded was by stipulation submitted to the three-judge District Court upon the pleadings, motions and affidavits, all of which are included in the record transmitted with the application. The District Court on April 1, 1976, in a 2-1 memorandum opinion dismissed appellants' complaint. The Court held that the provision in IC 1971, 3-1-9-19 requiring 500 signatures of registered voters from each of Indiana's eleven Congressional Districts on a petition before a candidate for president can be on the primary ballot was Constitutional. Immediately, thereafter, appellants have applied to this Court for relief.

THE QUESTION IS SUBSTANTIAL

The electoral process involved in this case is a portion of the process of selection for the office of president of the United States and the importance of the question is

clear. No cases, other than the instant one, have ever dealt with the issue of whether or not a state may compel a candidate for an office of statewide importance to demonstrate voter support throughout the state by submitting not only a specified number of petitioner's signatures, but also a particular number of signatures from all congressional districts within the state. 88 Harv. L. Rev. 1149-1150 (1975). Clearly the ramification of such a requirement, if held Constitutional, will be of national impact in limiting access to the ballot. Appellants contend that regional signature distribution requirements, such as imposed under the Indiana law, arbitrarily base voting strength on geography rather than people. Further, the greater the number of regions or districts involved, the more arbitrary and difficult will ballot access become. Thus, in Indiana the power of voters within a geographical area comprising 10/11th of the state's population may be totally diluted by the fact that the remaining 1/11th of the state's population may not have sufficient votes in support of a candidate to comply with the Statutory scheme herein challenged. Appellants' position on the unconstitutionality of the congressional district signature requirement is supported by *Moore v. Ogilvie* 1394 U.S. 814 (1969); *Reynolds v. Sims*, 377 U.S. 533 (1964); and *Communist Party v. State Board of Elections, State of Illinois*, 518 F.2d 517 (7th Cir. 1975). These cases all discussed analogous statutory schemes limiting ballot access and set forth constitutional principles applicable to the provision of the statute being challenged herein.

Further, there is no issue of mootness. The class scope of the action, the request for broad injunctions and declaratory relief, the allegations of future harm, the fact that involved in the case is a ". . . problem . . . 'capable of repetition, yet evading review' . . ," all make it clear that this is a live case fit for appellate review. *Moore v. Ogilvie,*

394 U.S. 814, 816 (1969); and *Communist Party v. Whitcomb*, 414 U.S. 441 (1974).

THE DECISION OF THE DISTRICT COURT IS INCONSISTENT WITH CONTROLLING DECISIONS OF THIS COURT CONCERNING DENIAL OF EQUAL PROTECTION AND DUE PROCESS GUARANTEED TO VOTERS

The right of individuals to organize and associate for the advancement of their political beliefs and the right of all qualified voters to cast their votes effectively for candidates of their choice have been firmly established among our precious freedoms, *William v. Rhodes*, 393 U.S. 23 (1968). The primary election process is an integral part of the process, where dissident political views of candidates within one of our major political parties can be aired in the public forum. It is this competition in ideas, approaches and governmental policies which is at the core of our electoral process, representative democracy and First Amendment freedoms. *Sweezy v. New Hampshire*, 354 U.S. 234 (1957).

Of course the state is not powerless to fix reasonable standards or requirements for a position on a primary ballot for an office of statewide interest, such as president of the United States, so that multifarious individuals in each of the major political parties do not bemuse the political process. No doubt there is an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political candidate on a ballot for a state presidential primary election. *Jenness v. Fortson*, 403 U.S. 431 (1971); *Jackson v. Ogilvie*, 325 F.Supp. 864 (N.D. Ill. 1971) requiring more than 5% but less than 8% of the total votes cast in the last election) aff'd. 40345925 (1971); *Beller v. Kirk*,

328 F.Supp. 485 (S.D. Fla. 1971) (requiring signatures of 3% of the number of registered voters, aff'd sub nom. *Beller v. Askew*, 403 U.S. 925 (1971); *Lyons v. Davaren*, 402 F.2d 890 (1st Cir. 1968); cert denied, 393 U.S. 1081 (1969). For this reason plaintiffs-appellants are not challenging the requirement to present the Secretary of State with 5,500 signatures of registered voters within Indiana before a candidate's name can be certified to appear on the ballot of the Indiana presidential primary election.

When, however, the state adds the requirement that a certain number of registered voter signatures must be obtained from every one of a state's congressional districts before a candidate for president can gain access to the ballot, there is something more than a significant modicum of support required. In essence such a requirement gives voters in only one congressional district an absolute veto power over the nomination of a presidential candidate, regardless of the fact that the candidate may have overwhelming support with a majority of the voters in the geographic area comprising the other congressional districts of a state. In fact, in Indiana a candidate could easily receive enough votes in a presidential primary election from the area consisting of 10/11ths of the state's population to win the election, even if he receives no votes from the remaining area consisting of 1/11th of the state's population. However under the present law, such a candidate cannot get on the ballot, even though he has shown a potential to win the election.

The effect of statutory provisions, herein challenged, is to arbitrarily debase and dilute the vote of a large number of the electorate in the State of Indiana desiring to vote for a recognized candidate for an office of statewide importance. In fact, the voting strength of that electorate desiring to vote for appellant Udall, who lives in an area

comprising 10/11ths of the state's population, is diluted to *nothing* by the failure to obtain 500 signatures on a petition from the electorate living in an area comprising only 1/11th of the state's population. It is well settled that state requirements regulating the electoral process, the effect of which are to dilute the votes of some members of the electorate, cannot be sustained, *Reynolds v. Sims,* 377 U.S. 533 (1964) (where the court held "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." 377 U.S. at 555). Diminution of the power of individual voters in a populous area of the state cannot be constitutionally tolerated. *Moore v. Ogilvie,* 394 U.S. 814 (1969); *Reynolds v. Sims,* 377 U.S. at 555 and *Communist Party v. State Election Board of Ill.,* 518 F.2d 517 (7th Cir. 1975). The District Court tended to ignore the fact that the power of the individual voters comprising an area consisting of 10/11ths of the state's population was in fact diminished to nothing in a state-wide primary because of the effect of IC 1971 3-1-9-19.

The state has therefore implemented a mechanism which has effectively prohibited the free exercise of the franchise to a large number of the electorate in the state of Indiana in an election of statewide and national importance. Where a state-wide primary is involved, there can be no compelling state interest in requiring a minimum number of voter's signatures from each Congressional District. See *Moore v. Ogilvie supra,* at 818-189. It is also pointed out that if the state is permitted to geographically fragmentize the state into small areas and then require a certain number of signatures from each such area before a candidate may gain access to the ballot, our concept of a popularly elected republican form of government (Article IV, Section 4 of

the Constitution of the United States) rapidly disappears and is replaced by dictatorial powers of voters comprising a minority of the State's population absolutely "black balling" candidates showing major popularity in a state and effectively vetoing the voter strength of the majority of voters in the state.

(2) THE DECISION OF THE DISTRICT COURT IS INCONSISTENT WITH CONTROLLING DECISIONS OF THIS COURT RECOGNIZING THE FIRST AMENDMENT RIGHTS TO STAND FOR PUBLIC OFFICE AND TO VOTE FOR CANDIDATES OF ONE'S CHOICE

Appellant Udall's request to run for public office after demonstrating a modicum of support throughout Indiana, as well as Appellants-Voters' interests in casting an effective vote in an unimpaired manner for such a candidate are preservative of other civil and political rights, and other rights, even the most basic, are illusory if this right to vote is undermined. *Communist Party v. Whitcomb,* 414 U.S. 441 (1974); *Wesberry v. Sanders,* 376 U.S. 1 (1969). Consequently, infringements of these fundamental rights invoke the most stringent Constitutional safeguards. *Williams v. Rhodes,* 393 U.S. 23, 31 (1968). See also, *Evans v. Cornman,* 398 U.S. 419 (1970); *Cipriano v. City of Phoenix,* 395 U.S. 701 (1969); *Kramer v. Union Free School District No. 15,* 395 U.S. 621 (1969); *American Party of Texas v. White,* 94 S.Ct. 1296 (1974) and *Storer v. Brown,* 94 S.Ct. 1274 (1974).

The Congressional district distribution requirement must be strictly scrutinized and is only justified to further a compelling state interest. The burden is upon the state to prove such an interest and it is pointed out no evidence on this matter was ever submitted. (*See Dunn v. Blumstein,*

405 U.S. 330 (1972) where this court held that in considering laws challenged under the 14th Amendment where the opportunity to vote is involved the state must show a substantial and compelling state reason to justify a diminution of this opportunity.)

The District Court volunteered that the state needed the geographical distribution requirement order IC 1971 3-1-9-19 in order to keep its presidential preference primary from being degraded, and its ballots unduly lengthened by the candidacy of every publicity seeker who might otherwise file. Appellants take exception with neither of these goals. Appellants' claims founder in the unconstitutionality of the means employed to achieve them. As this Court said in *Lubin v. Parrish,* 94 S.Ct. 1315 at 1320:

> This legitimate state interest [in preventing ballots of unreasonable size], . . . must be achieved by a means that does not unfairly or unnecessarily burden either a minority party's or an individual candidate's equally important interest in the continued availability of political opportunity.

The goals of the state may be satisfied by requiring a reasonable number of registered voters to sign a petition requesting a candidate be placed on the ballot, *Jenness v. Fortson,* 403 U.S. 431 (1970). A geographical distribution requirement as the one in Indiana has the effect of fencing out a candidate because he might not be able to receive a minimum number of signatures in one small area of the state, even though he may be extremely popular in other areas of the state. See *Carrington v. Rash,* 380 U.S. 99 (1965). Common sense demonstrates that some candidates do have regional appeal in a state—and similarly, are targets of regional antipathies. But these concerns simply cannot be bootstrapped up into constitutionally cognizable considerations, justifying keeping off the ballot those who might be viewed as representing the focus of certain regional concerns.

The aim of the state in preventing laundry list ballots is one sanctioned by this Court. However, the burden still rests on appellees to establish that the means chosen—the Congressional distribution requirement—is necessary, and that it is the least restrictive available. The record indicates that this burden has gone unmet and unproven. Nor could it be met or proven. The cases have sanctioned *percentage requirements,* requiring independent or minority party candidates to garner a certain number of signatures as evidence of some modicum of support. Here, the appellant Udall has met the numbers requirement—securing 5,500 signatures. Thus, in terms of the state's own numerosity standard, the appellant Udall has satisfied the burden.

Further, it is clear that each Indiana citizen has a constitutionally protected right to participate on an equal basis with other citizens in the jurisdiction in state wide elections. *Dunn v. Blumstien and Reynolds v. Sims, supra.* This right must necessarily include equal influence in determining if a candidate in a state wide election has a modicum of support to appear on the ballot. Under IC 1971, 3-1-9-19 the signatures of voters from any congressional district where less than 500 signatures are obtained on a petition are completely disregarded in determining if a presidential candidate has a modicum of support, as are those signatures in each district which exceed 500. Consequently the 465 voter-appellants in the Sixth Congressional district, as well as those voter-appellants in the other districts whose signatures exceeded the first 500 signatures in their respective districts, have been barred from the determination of whether candidate Udall should appear

on the May 4, 1976 Indiana primary ballot. The law in fact is not narrowly drawn to ensure that candidates demonstrate they have the support of a modicum of the voters; rather it is broadly drawn to negate that demonstration. Thus, the provision of IC 1971, 3-1-9-19 requiring 500 signatures from each congressional district should be held unconstitutional. The rest of the statute should stand intact. *See* generally, Stern, *Separability and Separability Clauses in the Supreme Court,* 51 Harv. L. Rev. 76 (1937); *Dorchy v. Kansas,* 264 U.S. 286 (1924) and *Baird v. Davoren,* 346 F. Supp. 515 (D. Mass. 1972).

CONCLUSION

For the reasons set forth above, jurisdiction should be noted and injunctive relief granted.

Respectfully submitted,

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APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MORRIS KING UDALL, NANCY SALMON, Individually and on behalf of all other qualified voters similarly situated, *Plaintiffs,*	)	
vs.	)	
OTIS BOWEN, Individually and as Governor of the State of Indiana, WILLIAM LLOYD, Individually and as Representative of the Governor of Indiana; LARRY CONRAD, Individually, and as Secretary of State of Indiana; JAMES T. NEAL and THURMAN M. DE MOSS, Individually and as members of the Indiana State Election Board, *Defendants.*	)	NO. IP 76-157-C

MEMORANDUM OPINION

Morris King Udall, who is seeking the nomination of the Democratic Party for the office of President of the United States, and Nancy Salmon, a registered Democratic voter of Indiana who desires to vote for Udall, and who sues on her own behalf and on behalf of all other similarly situated voters, brought this action to obtain a judgment declaring unconstitutional and enjoining the enforcement of the provision in I.C. 1971, 3-1-9-19 which requires a candidate who wishes his name placed on the Indiana presidential preferential primary ballot to submit petitions bearing a minimum of five hundred (500) signatures of registered voters from each of Indiana's eleven congressional districts. Plaintiffs contend that this provision violates the Due Process and Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

On March 23, 1976, upon motion by defendants, who are election officials of the State of Indiana, the case was dismissed by a single judge of this Court, pursuant to F.R.Civ.P. 12(b)(6), upon his finding that plaintiffs' claim failed to raise a substantial federal question. On March 29, 1976, the United States Court of Appeals for the Seventh Circuit, without expressing its opinion as to the merits of the case, vacated the order of the single judge and remanded the case for determination by a three-judge court convened pursuant to 28 U.S.C. § 2284. The parties, by stipulation, have submitted the case to the three-judge court upon the pleadings, motions, and affidavits already filed herein.

The facts of the case, as shown by the pleadings and affidavits, are clear and undisputed. I.C. 1971, 3-1-9-19, as last amended by Ind.Acts 1976, P.L. 1 (Senate Enrolled Act No. 23), requires a candidate who wishes his name placed on the Indiana presidential preferential primary ballot to submit to the Indiana Secretary of State, by at least fifty (50) days before the date of the primary election, a petition, and counterparts thereof, bearing the signatures of at least five thousand five hundred (5,500) registered Indiana voters. As already noted, the statute also requires a minimum of five hundred (500) signatures of registered voters from each of Indiana's eleven congressional districts. I.C. 1971, 3-1-1-2.5 provides that where an election statute requires a filing to be made by a certain day but does not specify a final hour, the final hour shall be twelve o'clock noon, prevailing time. Applied to this year's filing, these statutes required candidate Udall to file with the Indiana Secretary of State his petition bearing the requisite number of signatures by twelve o'clock noon, March 15, 1976.

It is undisputed that candidate Udall, before the filing deadline, complied with the statute by obtaining counterparts of his petition signed by five hundred (500) or more registered voters in each congressional district, all duly authenticated by the appropriate certifying officers. All that remained to assure his name being placed on the ballot was to file such counterparts with the Secretary of State by the filing deadline. Unfortunately, his agents delayed filing until the last minute, and then neglected to file one counterpart containing the signature of approximately one hundred (100) voters registered in the Sixth Congressional District. As a result of such oversight or neglect, the counterparts timely filed from such Sixth District contained only four hundred sixty-five (465) names, and the Secretary of State properly refused to certify Udall as a candidate. Irrespective of the merits of the constitutional argument, it is therefore apparent that the real reason why Udall was not routinely certified as a candidate on March 15, 1976, is his own failure to file a counterpart which was available to him.

There is no question but that substantial burdens placed upon the right to vote or to associate for political purposes are constitutionally invalid unless essential to serve a compelling state interest. The Supreme Court has recently restated the principles governing the decision of such cases in *Storer v. Brown*, 415 U.S. 724 (1974), saying:

> ". . . (A)s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes . . .
>
> "It is very unlikely that all or even a large portion of the State election laws would fail to pass muster under our cases; and the rule fashioned by the Court to pass on constitutional challenges to specific provisions of election laws provides no litmus-paper test

> for separating those restrictions that are valid from those that are invidious under the Equal Protection Clause . . . Decision in this context, as in others, is very much a 'mater of degree,' . . ."

One consideration, therefore, is as to the extent of the burden imposed upon a candidate by I.C. 1971, 3-1-9-19. As the Court knows judicially, each of the eleven congressional districts contains approximately 471,000 persons, as per the 1971 redistricting, and that approximately 2,937,000 voters were registered, statewide, for the 1974 election—an average of 267,000 per district. Thus to require the signatures of five hundred (500) voters per district amounts to a requirement for slightly over one-tenth of 1% of the persons or slightly less than two-tenths of 1% of the registered voters to sign.

In *Jenness v. Fortson,* 403 U.S. 431 (1970), the Court upheld the constitutionality of a Georgia statute providing that an independent candidate for public office may only have his name printed on the ballot if he has filed a nominating petition signed by at least 5% of the number of registered voters at the last general election for the office in question. The Court found that there is "an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of the political organization's candidate on the ballot." It follows, therefore, that there cannot be anything unconstitutional in the number of signatures required by the Indiana statute.

The other objection to the statute is that it is somehow unconstitutional because it requires a minimum number of signatures from each of the eleven congressional districts, and that this is unduly difficult and burdensome. This is similar to appellants' claim in *Jenness,* which the Supreme Court rejected in the following language:

> ". . . This claim is necessarily bottomed upon the premise that it is inherently more burdensome for a candidate to gather the signatures of 5% of the total eligible electorate than it is to win the votes of a majority in a party primary. That is a premise that cannot be uncritically accepted . . ."

Plaintiffs here place reliance on the cases of *Moore v. Ogilvie,* 394 U.S. 814 (1969), and *Communist Party v. State Board of Elections,* 518 F.2d 517 (7 Cir. 1975). Such reliance is ill-founded. Those cases held invalid Illinois statutes which, by requiring a specified number of signatures from counties of unequal population, effectively gave greater weight to the signatures of voters in relatively less-populous counties. Because the eleven congressional districts in Indiana are substantially equal in population, the ballot access scheme prescribed by I.C. 1971, 3-1-9-19, avoids the equal protection objections of the cases cited.

A more recent decision which, by analogy, finds no constitutional difficulty in a statute imposing a reasonable geographical requirement is the January 30, 1976 opinion of the Court in *Buckley v. Valeo,* — U.S. —, 46 L.Ed.2d 659. That decision, upholding in large part and rejecting in part the Federal Election Campaign Act of 1971, considered the requirement establishing eligibility for federal funding for a presidential candidate, § 9033 of Chapter 96 of the Act, which sets up as a threshold eligibility requirement that the candidate raise at least $5,000 in each of twenty (20) states, counting only the first $250 from each person contributing to the candidate. The provision was held to be constitutional, on three grounds:

(1) Congress may require " 'some preliminary showing of a significant modicum of support,' *Jenness v. Fortson, supra* . . ." as an eligiblity requirement for public funds;

(2) The States have important interests in limiting places on the ballot to those candidates who demonstrate substantial popular support. (Citing *Storer v. Brown, supra; Jenness v. Fortson, supra; Lubin v. Panish,* 425 U.S. 709 (1974), and *Williams v. Rhodes,* 393 U.S. 23 (1968);) and

(3) The requirement serves the important public interest against providing artificial incentives to "splintered parties and unrestrained factionalism." (Citing *Storer v. Brown, supra,* and *Bullock v. Carter,* 405 U.S. 134 (1972).)

Certainly the State of Indiana has a valid interest in requiring the comparatively insignificant activity required by the statute in question in order to keep its presidential preference primary from being degraded, and its ballots unduly lengthened by the candidacy of every publicity seeker who might otherwise file. This is particularly true since, contrary to the statement of the United States Court of Appeals for the Seventh Circuit in its order remanding this case for consideration by a three-judge court, delegates to the national convention are not selected in the primary election. I.C. 1971, 3-1-10-3, provides that all of such delegates be selected by the state convention of the party, and I.C. 1971, 3-1-9-19, provides that such delegates shall "have a duty" to support the candidate receiving the highest statewide primary vote for one ballot only in the national convention. Therefore, since splinter candidates have no change, as a practical matter, of winning delegate votes by running in the primary, the minimal regulations imposed by the statute is reasonable in degree, protects valid state interests, and is constitutional.

Dated this 1st day of April, 1976.

/s/ CALE J. HOLDER

Cale J. Holder, Judge
United States District Court,
Southern District of Indiana,
Assigned Trial Judge, and
Member of Three-Judge Trial Court

/s/ S. HUGH DILLIN

S. Hugh Dillin, Judge
United States District Court,
Southern District of Indiana,
Designated Member of Three-Judge
Trial Court

SWYGERT, Circuit Judge, dissenting.

It must be conceded that the state has an interest in setting reasonable requirements for those who wish to become candidates in a statewide primary. As stated in *Jenness v. Fortson,* 403 U.S. 431 (1970):

> "There is surely an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization's candidate on the ballot—the interest, if no other, in avoiding confusion, deception, and even frustration of the democratic process at the general election."

On the other hand, a statutory scheme which gives an unequal weight to the votes of citizens depending upon the geographical area of the state where they live is discriminatory and unconstitutional, *Moore v. Ogilvie,* 394 U.S. 814 (1969).

In my opinion, I.C. 1971, 3-1-9-19, is both unconstitutional on its face and as applied. *Communist Party v. State Board of Elections, State of Illinois,* 518 F.2d 517 (7 Cir. 1975), supports this conclusion. Although the statutory schemes involved in the two cases are not identical, they are analogous and may not be legally distinguished.

Under the Indiana statutory scheme, the power of voters within a geographical area comprising 10/11ths of the state's population may not have sufficient voters in support of a candidate to comply with the statutory minimum.

In sum, the statute gives the voters in one congressional district an absolute power over the nomination of a Presidential candidate regardless of the fact that that candidate may have overwhelming support with a majority of the voters in the other ten congressional districts of the state.

Thus, there is a denial of equal protection and due process guaranteed to the voters of the State of Indiana by the Fourteenth Amendment.

Admitting the state interest in protecting the integrity of its political processes, due process, nonetheless, requires that the state accomplish that end narrowly and fairly to avoid obstructing and diluting the fundamental right to vote effectively. *Briscoe v. Cusper,* 435 F.2d 1046 (7 Cir. 1970); *Williams v. Rhodes,* 393 U.S. 23 (1968). Since here, a statewide primary is involved there can be no legitimate state interest in requiring a minimum number of voters' signatures from each congressional district. *See Moore v. Ogilvie, supra,* at 818-19.

/s/ LUTHER M. SWYGERT,

Luther M. Swygert, Circuit Judge
United States Court of Appeals
For the Seventh Circuit

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MORRIS KING UDALL and
NANCY SALMON, individually and on behalf of all other qualified voters similarly situated,
Plaintiffs,

vs.

OTIS BOWEN, individually and as Governor of the State of Indiana,
WILLIAM LLOYD, individually and as Representative of the Governor of Indiana;
LARRY CONRAD, individually, and as Secretary of State of Indiana;
JAMES T. NEAL and
THURMAN M. DE MOSS, individually and as members of the Indiana State Election Board.
Defendants.

CAUSE.
NO. IP 76-157-C

ORDER

The plaintiffs, having filed a Motion for Injunction pending appeal to the Supreme Court of the United States, and the Court having duly considered the motion and being duly advised, now therefore

IT IS ORDERED the plaintiff's Emergency Motion for an Injunction Pending Appeal is denied.

/s/ CALE J. HOLDER

Cale J. Holder, Judge
United States District Court

/s/ S. HUGH DILLIN

S. Hugh Dillin, Judge
United States District Court

Dated this 5th day of April, 1976.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MORRIS KING UDALL and
NANCY SALMON, individually and on behalf of all other qualified voters similarly situated,
Plaintiffs,

vs.

OTIS BOWEN, individually and as Governor of the State of Indiana,
WILLIAM LLOYD, individually and as Representative of the Governor of Indiana;
LARRY CONRAD, individually, and as Secretary of State of Indiana;
JAMES T. NEAL and
THURMAN M. DE MOSS, individually and as members of the Indiana State Election Board.
Defendants.

CAUSE.
NO. IP 76-157-C

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Morris King Udall, and Nancy Salmon, the plaintiffs above-named, hereby appeal to the Supreme Court of the United States from the final order dismissing the complaints entered in this action on April 1, 1976.

This appeal is taken pursuant to 28 U.S.C. § 1253.

Respectfully submitted,

/s/ R. DAVY EAGLESFIELD, III

R. Davy Eaglesfield, III
309 Union Federal Building
Indianapolis, Indiana 46204
(317) 634-3913

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April, 1976, three copies of the Notice of Appeal to the Supreme Court of the United States were personally delivered to David Kreeder, Esquire, Assistant Attorney General, 219 State House, Indianapolis, Indiana 46204, Counsel for Defendant-Appellees. I further certify that all parties required to be served have been served.

/s/ R. DAVY EAGLESFIELD, III

R. Davy Eaglesfield, III
309 Union Federal Building
Indianapolis, Indiana 46204
(317) 634-3913

Counsel for Plaintiffs

AFFIDAVIT

N. Stuart Gravel, being first duly sworn upon his oath, deposes and says:

1. He is a Deputy Secretary of State for Indiana.
2. He has personal knowledge of the following facts,
   (a) That representatives of Morris King Udall presented to him and the office of Secretary of State of Indiana a request to be placed on the ballot for the 1976 presidential primary under the label of the Democratic Party.
   (b) Accompanying said request was a petition consisting of counter-parts containing the signatures of at least 5,500 registered voters of the State of Indiana requesting that Udall's name be placed on the primary ballot or voting machine at the May 4, 1976 presidential primary election.
   (c) The petition contained a nimimum of five hundred (500) signatures of registered voters from 10 of the 11 congressional districts within Indiana.
   (d) The petition as submitted at the 12 noon, March 15, 1976 deadline, contained 465 signatures of registered voters from the Sixth Congressional District within Indiana.
   (e) Morris King Udall, in seeking certification on the May 4, 1976 presidential primary election ballot, complied with all statutory provisions of Indiana law to have his name on the ballot for the primary election, except to obtain 500 signa-

tures in the Sixth Congressional District as IC 1971, 3-1-9-19 directs.

(f) The only reason the Secretary of State of Indiana did not certify Morris Udall as a candidate on the ballot for the May 4, 1976 Indiana primary election was the failure of his representatives to submit a minimum of 500 signatures of registered voters for the 6th congressional district by the statutory deadline of twelve noon on March 15, 1976, pursuant to IC 1971, 3-1-9-19, which requires a candidate seeking certification for a presidential primary to submit a minimum of 500 signatures of registered voters from each of the eleven congressional districts within Indiana by a statutorily defined deadline.

/s/ N. STUART GRAVEL

N. Stuart Gravel

Subscribed and sworn to before me, Notary Public of the County of Marion, State of Indiana, this 22nd day of March, 1976.

/s/ JEANNE M. TRIXLER

Notary Public

My Commission Expires:

10-15-79